

## **Section 3.5 Policy Prohibiting Sexual Misconduct**

### **I. Sexual Misconduct is Prohibited**

The Board of Trustees and Western State Colorado University (“WSCU” or the “University”) intend to maintain a campus community free from all forms of sexual misconduct, which includes sexual harassment, hostile environment, sexual assault, domestic violence, dating violence, sexual exploitation, stalking, retaliation and intimidation, as defined below. It is the University’s policy that all forms of sexual misconduct are prohibited and will not be tolerated. This policy is promulgated pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1981 et.seq., and its implementing regulations, 34 C.F.R. part 106; Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c).

#### **Clery Act Obligations**

Western State Colorado University participates in federal student financial aid programs and is subject to the requirements of the Clery Act. The Clery Act requires institutions of higher education to provide current and prospective students, employees, the public and the Department of Education with crime statistics and information about campus crime prevention programs and policies annually. (See the Annual Security Policies Report on Western’s Security Services web page.)

#### **A. Addressing Sexual Misconduct**

The University will take all necessary measures to deter sexual misconduct, including but not limited to preventive educational programs, prompt and thorough investigation of sexual misconduct complaints and the imposition of appropriate disciplinary sanctions against policy violators.

#### **B. Training and Education**

The University shall continue to provide training and education programs to promote awareness of sexual harassment and sexual assault/violence. These may include, but are not limited to, required online education programs for students and employees, dissemination of educational materials to incoming students and new employees, and periodic training programs for students and staff.

#### **C. Retaliation**

Retaliation in any form against any member of the University community for reporting sexual misconduct or cooperating in a sexual misconduct investigation is strictly prohibited. Such retaliation shall be dealt with as a separate instance of sexual misconduct. Complaints of sexual misconduct or of retaliation are handled according to the administrative procedures developed and implemented by the University for this purpose.

### **II. Scope of Policy**

This policy applies to all students and employees, regardless of their sexual orientation or gender identity. This policy also applies to all third parties who have access to or use of any University facilities and/or grounds for any reason.

This policy also applies to University-sponsored programs and events, whether on or off campus. This includes, but is not limited to international travel, field trips, conferences, camps, classroom activities, residence halls and all academic and student facilities and events.

### **III. Reporting Sexual Misconduct**

The University encourages victims of sexual misconduct to talk to somebody about what happened – so that victims can get the support they need and the University can respond appropriately. This policy is intended to make individuals aware of the various reporting and confidential disclosure options available to them so that they can make informed choices about where to turn should they become a victim of sexual misconduct.

#### **A. University Reporting**

The University can only respond to allegations of sexual harassment or violence if they are reported. Reporting enables the University to promptly provide support to the impacted students, employees or third parties, and to take appropriate action against the responding party to prevent a recurrence and protect the campus community. Any student, employee, or third party who believes she or he may be the victim of sexual harassment or violence is encouraged to report to the University through one or more of the following resources:

**1. Title IX/Sexual Misconduct Administrator**

Chris Luekenga

Taylor Hall 301

970.943.2616

[cluekenga@western.edu](mailto:cluekenga@western.edu)

**2. Responsible Employees**

Certain employees are required to report the details of an incident (including the identities of both the victim and the alleged perpetrator) to the Title IX Administrator. A report to these employees (called “Responsible Employees”) constitutes a report to the University – and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

A “Responsible Employee” is a University employee who has the authority to redress sexual violence and the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty. The following categories of employees are the University’s responsible employees: Faculty, Academic Affairs Administrators, Student Affairs Administrators, and certain Residence Life Staff including the Director and Assistant Director of Residence Life and Resident Advisors, Coaches, supervisors, the Director of Human Resources, the President and Vice Presidents of the University. These Responsible Employees are required to report all the details of an incident (including the identities of both the Complainant and the alleged Respondent) to the Title IX Administrator. A report to these Responsible Employees constitutes a report to the University – and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

### 3. On Campus Confidential Reporting of Sexual Misconduct

If the Complainant requests confidentiality or asks that the complaint not be pursued, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a Complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the University will inform the Complainant that its ability to respond may be limited.

## B. Confidential Reporting

### 1. On-Campus Confidential Resources

Should a complainant wish to speak with an individual in confidence, they should speak with someone at the University's Counseling Center. Counselors generally will only report to the University that an incident occurred without revealing any personally identifying information. Disclosures to these individuals will not trigger a University investigation into an incident against the victim's wishes.

Individuals may report confidentially to the following campus resources that provide support and guidance:

#### **Campus Counseling Center**

Tomichi Hall 104

970.943.2484

After Hours Emergency: 970.252.6220

#### **Campus Health Clinic**

Tomichi Hall 104

970.943.2707

### 2. Gunnison Community Confidential Resources

#### **Center for Mental Health**

710 N. Taylor Street

970.641.0229

#### **Gunnison/Hinsdale Confidential Advocacy Center**

304 W. Tomichi Ave.

24/7 Helpline: 970.275.1193

970.641.2712 Office

[www.ghadvocacy.org](http://www.ghadvocacy.org)

### 3. Local Law Enforcement Reporting

#### **Gunnison Police Department**

Emergency 911

970.943.8240

#### **IV. Amnesty for Alcohol, Drug & Other Conduct Associated with Sexual Misconduct**

In those cases where individuals have been involved in incidents of sexual misconduct while under the influence of alcohol and/or drugs, the University will not pursue disciplinary actions against those involved (or against a witness) for his or her improper use of alcohol or drugs (e.g. underage drinking). Amnesty is intended to support the practice of individuals reporting incidents of prohibited discriminatory harassment, sexual misconduct, and other violations of this policy, and to protect an individual's safety. Individuals experiencing or witnessing violations of this policy while themselves violating another University policy (for example, the University policy concerning alcohol and other drug use), are encouraged to report the violations of this policy that they experienced or witnessed.

#### **V. Definitions**

##### **A. Sexual Harassment**

Sexual Harassment is:

- Unwelcome, gender-based verbal or physical conduct of a sexual nature, without regard to the gender of the Complainant and Respondent;
- That is sufficiently severe, persistent or pervasive that it has the effect of unreasonably interfering with, denying, or limiting someone's ability to participate in or benefit from WSCU's educational program or activities, or work activities, and;
- The unwelcome behavior is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

A number of different acts fall into the category of sexual harassment, including without limitation, dating violence, sexual exploitation and stalking.

##### **1. Quid Pro Quo**

Quid pro quo sexual harassment exists when there are:

- Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and
- Submission to or rejection of such conduct results in adverse educational or employment action; or
- Affects the terms or conditions of education or employment or activities with the University.

##### **2. Hostile Environment**

A hostile environment is created by unwelcome sexual behavior or behavior directed at an individual because of that individual's sex, gender or sexual orientation that is offensive, hostile and/or intimidating and that adversely affects that individual's university work/learning/living/program performance. Harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive that it substantially interferes with the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

##### **3. Retaliation**

The University prohibits and will not tolerate retaliation against any person who opposes or reports a discriminatory practice which is forbidden by law or this policy or who has filed a

grievance, testified, assisted, or participated in any manner in an investigation or proceeding conducted under this policy. Acts of retaliation may be the subject of a complaint or grievance under this policy. Retaliation may include intimidation, threats, or harassment, whether in person or via electronic means. Retaliation should be reported promptly to the Office of Student Affairs or Security Services or the Gunnison Police Department and may result in disciplinary action independent of and in addition to any sanction imposed in response to the underlying allegations of sexual harassment.

**4. Sexual Assault and/or Violence**

Sexual assault/sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual assault, including, without limitation, rape, sexual violence, domestic violence, sexual battery and sexual coercion. All such acts of sexual assault are forms of sexual misconduct covered under Title IX, including, without limitation:

- Non-consensual sexual contact, including sexual touching, groping and fondling.
- Non-consensual sexual intercourse, including vaginal, anal, and/or oral penetration. Penetration may be by a body part or by an object.

**5. Domestic Violence**

Domestic violence means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Intimate relationship means a relationship between current or former spouses, current or former unmarried couples, or persons who are both the parents of the same child regardless of whether the people involved have been married or have lived together at any time.

**6. Dating Violence**

Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type and frequency of interaction.

**7. Sexual Exploitation**

Sexual exploitation means any actual or attempted abuse of a position of vulnerability, power differential, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

**8. Stalking**

Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/others safety, or to suffer substantial emotional distress. Stalking is a repetitive pattern of unwanted, harassing, following, contacting, or threatening behavior committed by one person against another. Stalking may take the form of, but is not limited to, harassing telephone calls, electronic communications, and/or letter-writing.

**9. Intimidation**

Intimidation means to compel or deter by or as if by threatening.

## **B. Consent**

Consent to sexual activity is informed, knowing, and voluntary.

- Consent cannot be given by someone who is incapacitated due to the use of alcohol, drugs, sleep, or unconsciousness, or due to intellectual or other disability that prevents an individual from having the capacity to give consent.
- Past consent does not imply future consent.
- Consent is active, not passive. Silence or an absence of resistance, in and of themselves, do not imply consent.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Consent may be withdrawn at any time.
- Unwanted coercion, force, or threat invalidates consent.

## **C. Incapacitation**

With incapacitation, an individual lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, or emotional volatility.

## **D. Complainant**

Complainant is a person who has been subjected to the alleged sexual misconduct or related retaliation. For purposes of this policy, a Complainant can be a WSCU employee, student, authorized volunteer, guest, or visitor.

## **E. Respondent**

A Respondent is a person whose alleged sexual misconduct is the subject of a complaint. For purposes of this policy, a Respondent can be a WSCU employee, student, authorized volunteer, guest, or visitor.

## **F. Preponderance of Evidence**

The standard of proof is the amount of evidence needed to establish a violation of policy has occurred. The Sexual Misconduct policy uses a “preponderance of evidence” standard, which means that the evidence demonstrates that it is more likely than not the alleged conduct or policy violation has occurred. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

## **G. Amorous Relationship**

Concurrent Amorous Relationships and Professional Relationships between Western employees and Western students are prohibited. Refer to the Trustees Policy section 3.13 Amorous Relationships for more information.